

9:00 a.m.
September 26, 2000

MINUTES – REGULAR MEETING

Evergreen Plaza Bldg. Room 206
711 Capitol Way South
Olympia, Washington

COMMISSION MEMBERS PRESENT

Ronda Cahill, Chair
Christine Yorozu, Vice Chair
Gerry Marsh, Secretary
Susan Brady, Member
Richard C. Locke, Member

STAFF PRESENT

Vicki Rippie, Executive Director
Susan Harris, Assistant Director
Michael Smith, Chief Technology Officer
Nancy Krier, Asst. Attorney General
Steve Reinmuth, Asst. Attorney General
Ruthann Bryant, Secretary

The regular meeting of the Public Disclosure Commission was called to order by Commission Chair Ronda Cahill at 9:00 a.m. in the Evergreen Plaza Building, Room 206, Olympia, Washington.

Minutes

Moved by Commissioner Yorozu, seconded
by Commissioner Marsh:

Motion 01-028

**The Commission adopts the minutes
of the special meeting of August 29,
2000, as written.**

Voting for: Commissioners Cahill, Yorozu,
Marsh and Brady

Not voting: Commissioner Locke

Citizen Comments/Concerns

No citizen comments were expressed.

Commissioner Comments

No commissioner comments were expressed.

Interpretations

Use of "Soft Money" for Issue
Advocacy

Assistant Attorney General Nancy Krier presented
a draft interpretation that highlights many of the
key points of the State Supreme Court's decision
in Washington State Republican Party v.

Washington State Public Disclosure Commission et al. She commented that the interpretation is designed to assist the public and staff in distinguishing between express advocacy and issue-oriented political speech by distilling from the decision the examples given of express advocacy and issue advocacy. Ms. Krier also noted that the interpretation would be available on the PDC's website with a hyperlink to the WA State Supreme Court Decision.

Mr. John White commented that the draft interpretation was very good, but recommended a category of specific elements or activities that are neutral in determining whether a particular communication constitutes express advocacy or issue advocacy, i.e., the use of candidate names or likenesses, an ad's timing and the motive of the ad's sponsor. He also recommended the interpretation explicitly recognize that RCW 42.17.105(8) does not apply to contributions made or received for issue advocacy communications.

Ms. Krier commented that the State Supreme Court did not rule on RCW 42.17.105, therefore she did not advise including that section in the interpretation.

Commissioner Brady said that if an ad portraying a candidate's record included a photograph of that candidate's opponent, the ad might not be viewed as issue-oriented speech.

Mr. White noted that a side-by-side comparison ad or the presence of a candidate's name or likeness would be a neutral factor since it doesn't attempt to sway a person in one particular direction. It would be based on the message conveyed and the words used.

MOTION 01-029

Moved by Commissioner Brady, seconded by Commissioner Marsh:

The Commission adopts the proposed PDC Interpretation # 00-04, Use of "Soft Money"

for Issue Advocacy, as presented in staff amendment 1.

The motion passed unanimously.

Proposed Guidelines for
Public Agencies

Doug Ellis reported on guidelines developed as part of a consent decree between the Attorney General's Office and Intercity Transit. The guidelines clarify the statutory requirements of RCW 42.17.130 for all local agencies, including school districts. Mr. Ellis noted RCW 42.17.131 exempts from section .130 state officers and state employees because they are covered under RCW 42.52.

Mr. Ellis drew attention to some of the commonly asked questions addressed by the proposed guidelines, highlighting market research, timing of communications and fact sheets.

MOTION 01-030

Moved by Commissioner Brady, seconded by Commission Yorozu:

The Commission adopts, as amended, PDC Interpretation #00-05, Guidelines for Local Government Agencies, including School Districts, in Election Campaigns.

The motion passed unanimously.

Personnel Matter

Commissioner Cahill presented a draft management evaluation instrument -- developed from approaches used by the Council on Government Ethics Laws and the State of Arizona Executive Director's Forum -- for use by the Commission to evaluate the executive director's performance. The executive director also would use the same tool to evaluate the performance of the assistant director and chief technology officer.

Commissioner Yorozu suggested the Commission adopt a strategic plan and consider the executive director's success in implementing the plan as the basis for his or her evaluation. She also

suggested having a Department of Personnel facilitator assist the Commission in setting agency goals.

The Commission directed staff to contact the Department of Personnel regarding obtaining the services of a facilitator to assist the Commission in developing a strategic plan early next year.

Enforcement Matters
Hearings:

Friends of Deborah Senn
Case #00-888

Assistant Attorney General Steve Reinmuth summarized the case against Friends of Deborah Senn for a violation of RCW 42.17.790 for using contributions received for one office to further the candidacy of the individual for an office other than the office designated on the statement of organization.

Mr. Reinmuth read the Stipulation of Fact, Violation and Proposed Penalty into the record noting that in the complaint filed by Executive Director Vicki Rippie included allegations in which the Friends of Deborah Senn used contributions to purchase subscriptions to several publications and to contract with an individual to prepare PDC forms. Staff recommends dismissing both of those allegations and accepting the Stipulation of Fact, Violation and Proposed Penalty.

MOTION 01-031

Moved by Commissioner Brady, seconded by Commissioner Yorozu:

The Commission accepts the Stipulation of Fact, Violation and Proposed Penalty in PDC Case #00-888, Friends of Deborah Senn, and directs the \$10,000 penalty be paid within 30 days, and dismisses the remaining allegations regarding the purchase of subscriptions and the costs incurred to prepare PDC reports.

The motion passed unanimously.

Brian Derdowski
Case #00-261

Mr. Reinmuth summarized the case against Brian Derdowski for violation of RCW 42.17.080 and .090 by failing to timely file four reports of contributions and expenditures and by failing to timely file eight detailed reports of contributions received, and for violation of RCW 42.17.080 by failing to have complete books of account and PDC reports available for public inspection.

Mr. Reinmuth read the Stipulation of Facts, Violations and Penalty into the record noting that all of the missing forms were filed on July 28, 2000.

Mr. Derdowski was present and addressed the Commission stating that his treasurer had resigned and relocated to Eastern Washington and, since the committee's October bank statement had been misplaced, the aggregate totals could not be completed. He also stated that he did not feel that he had to provide the PDC forms during the open records period since they were available at the PDC and the county elections office. Mr. Derdowski also requested that the respondent be changed from Brian Derdowski to Citizens for Brian Derdowski.

The Commission chose to list both Mr. Derdowski and the committee as respondents.

Commissioner Brady noted that Mr. Derdowski had ignored filing deadlines and had repeatedly failed to file the reports after being contacted by staff. She suggested a penalty payment schedule that requires immediate payment of the entire penalty if one payment is late.

Commissioner Cahill suggested amending the stipulation to reflect a payment schedule of \$400 due in October 2000 and \$200 due each month thereafter with payments to be received in the Public Disclosure Commission office by the 15th of each month.

Mr. Derdowski asked that the payment schedule begin in December, after the election.

MOTION 01-032

Moved by Commissioner Brady, seconded by Commissioner Yorozu:

The Commission amends the Stipulation of Facts, Violations and Penalty of \$3000 with \$500 suspended in PDC case #00-261 to include a payment schedule of \$800 due by December 15, 2000 and \$200 due by the 15th of each month thereafter with the penalty paid in full by September 25, 2001. If one payment is late, the remaining portion of the penalty becomes due in full immediately, including the \$500 suspended, since the terms of the suspension would not have been met.

The Commission approves adding Citizens for Brian Derdowski, along with Brian Derdowski, as a respondent listed on the Stipulation of Facts, Violations and Penalty.

The motion passed unanimously.

Mr. Derdowski agreed to accept the Commission's amendments to the stipulation.

MOTION 01-033

Moved by Commissioner Brady, seconded by Commissioner Marsh:

The Commission accepts the amended Stipulation of Facts, Violations and Penalty in PDC case # 00-261, Brian Derdowski and Friends of Brian Derdowski.

The motion passed unanimously.

*Washington Education
Association, case #01-002*

Mr. Reinmuth reported that a complaint was filed by the Evergreen Freedom Foundation against the Washington Education Association (WEA) for

violations of RCW 42.17.760 for using agency shop fees to make contributions or expenditures to influence an election without affirmative authorization. He also read the Stipulation of Facts, Violations and Recommendations into the record.

Harriet Strasberg, attorney for WEA, was present and reported that WEA agreed to the stipulation because the association believes its action only constitutes a technical violation. Further, the Evergreen Freedom Foundation filed a separate complaint against WEA in the past in which a portion was referred to the Attorney General's Office and a portion was dismissed. Although, WEA prevailed in superior court (on the portion that was dismissed by the PDC), it was forced to spend over a million dollars on litigation.

Commissioner Cahill asked legal counsel if there would be a problem accepting a stipulation to an actual violation, instead of finding an apparent violation, prior to a referral to the Office of the Attorney General.

Ms. Krier responded that the Commission could note an apparent violation under the statute even though both parties had stipulated to the violation.

MOTION 01-034

Moved by Commissioner Brady, seconded by Commissioner Marsh:

The Commission accepts the Stipulation of Facts, Violations and Recommendations in PDC case #01-002, Washington Education Association, finds apparent violations of RCW 42.17.760, stipulated to as actual violations, and refers the matter to the Attorney General's Office.

The motion passed unanimously.

*Washington State, case
#01-013*

Mr. Reinmuth reported on a complaint filed by the Evergreen Freedom Foundation against all 296 school districts in Washington state for violation of RCW 42.17.680(3) by withholding general dues from its employees for WEA that are used by the organization to make contributions to ballot issue political committees and WEA-PAC.

Staff recommends dismissal of this complaint based on the Washington State Supreme Court decision affirming the Commission's regulation WAC 390-17-100 which requires that the annual authorization only needs to occur when the contribution is going directly to a political committee or candidate.

MOTION 01-035

Moved by Commissioner Marsh, seconded by Commissioner Locke:

The Commission dismisses PDC case #01-013, All Public School Employers in Washington State, regarding alleged violations of RCW 42.17.680(3).

The motion passed unanimously.

*Request for Review
Alan Yanity, case #00-231*

Mr. Stutzman reported that a brief enforcement hearing was held June 22, 2000 in which Mr. Yanity was found in violation of RCW 42.17.241 for failing to file the F1 Supplement to his Personal Financial Affairs Statement disclosing required information about Fire District 16 Oversight Committee and Citizens Against Crime. He was assessed a penalty of \$50. Mr. Yanity was also found in violation of RCW 42.17.090 for failing to file a C3 report for the \$300 contribution deposited on June 1, 1999. He was assessed a penalty of \$50, but that penalty was suspended.

Mr. Yanity was present and addressed the commission stating that he did not think that it was necessary to report the required information about Fire District 16 Oversight Committee and Citizens

against Crime on the Personal Financial Affairs Statement. He commented that the \$300 contribution was reported on his paperwork and he did not know why the PDC's papers did not reflect the contribution.

There was no motion to review.

Request for Reconsideration
Martin Ringhofer, case #00-731

Susan Harris reported that a brief enforcement hearing was held December 9, 1999 in which Mr. Ringhofer was found in violation of RCW 42.17.050 and RCW 42.17.240 for failure to timely file a Candidate Registration and the Statement of Financial Affairs. He was assessed a penalty of \$50 with \$50 suspended.

Ms. Harris also reported that Mr. Ringhofer has requested judicial review of an initial order dated January 14, 2000 because the order was in error since it stated that Mr. Ringhofer did not appear, when he had appeared in writing.

Ms. Harris also noted the original order states the C1 was filed December 1, 1999, when it was actually filed on October 14, 1999. She added that the C1 was still filed late because it was due within two weeks of Mr. Ringhofer becoming a candidate or no later than August 13th.

Motion 01-036

Moved by Commissioner Brady, seconded by Commissioner Cahill:

The Commission will issue an amended order in PDC case #00-731 to reflect the correct Candidate Registration filing date and that Mr. Ringhofer appeared in writing.

The motion passed unanimously.

Executive Session

The Commission went into executive session at 12:00 p.m. to discuss possible litigation with legal counsel.

Public Session

The Commission returned to public session at 1:00 p.m.

Reporting Modifications

*Yvonne E. Cartwright, Board of
Trustees, Technical College
District 25 (Bellingham)*

Mr. Stutzman reported that Ms. Cartwright requests an exemption from reporting business customers of Moss Adams LLP of which her spouse is a partner.

MOTION 01-037

Moved by Commissioner Cahill, seconded by Commissioner Marsh:

The Commission grants the reporting modification for Yvonne E. Cartwright, as requested.

The Commission finds that literal application would cause a manifestly unreasonable hardship on the applicant and that a limited modification would not frustrate the purposes of the act.

The motion passed unanimously.

*Robert MacDermid, Candidate
Freeholder, Kitsap County*

Mr. Stutzman reported that Mr. MacDermid requests an exemption from reporting business customers of the law practice of MacDermid Liebert & Morgan, P.S. Mr. Stutzman noted that Mr. MacDermid did not believe that Kimura Protocol #2 was appropriate.

Ms. Krier suggested providing Mr. MacDermid with a list of other prominent attorneys who have also been granted a modification under Kimura Protocol #2.

MOTION 01-038

Moved by Commissioner Brady, seconded by Commissioner Locke:

The Commission grants a reporting modification to allow Robert MacDermid to

satisfy the reporting requirements of RCW 42.17.241 (1)(g)(ii) by identifying for the appropriate reporting period:

- (a) The names of the reportable business clients for whom the applicant has done legal work;**
- (b) Other reportable business clients of the law firm whose interests are significantly affected by the actions of the Freeholders of Kitsap County, whose identities become known to the applicant by any means;**
- (c) The names of the reportable business clients of the law firm listed in Martindale Hubbell, the firm's publicity brochure(s), the firm's resume, or whose identities are otherwise publicized; and**
- (d) All governmental clients that have done business with the law firm.**

The applicant, if elected, shall recuse himself from participating in decisions in his elected capacity that affects the interests of the law practice for which the reporting modification was requested.

The Commission finds that literal application would cause a manifestly unreasonable hardship on the applicant and that a limited modification would not frustrate the purposes of the act.

The motion passed unanimously.

Staff Reports
Executive Director

Vicki Rippie reported on the status of the FY 2001 budget and recapped revenue receipts for the current biennium. She also noted that an appointment was scheduled with Fred Hellberg of the Governor's office to discuss the agency request legislation submitted last week.

Assistant Director

Susan Harris reported on the hiring of a Senior Political Finance Specialist, Suemary Trobaugh and a Political Finance Specialist, Anne Springer.

She also commented that brief enforcement hearings were held on Monday for 11 unions that either: (1) failed to file the Special Political Expenditure reports (PDC form C7), or (2) failed to have at least 10 registered voters contribute \$10 or more to their PAC at least 180 days prior to the PAC making contributions to candidates. In addition, 15 candidates were scheduled for hearing later this afternoon for failure to file the Financial Affairs Statement (PDC form F1) and/or Candidate Registration Statement (PDC form C1) within two weeks of their becoming candidates in the 2000 election.

Chief Technology Officer

Michael Smith briefed the Commission on the web site usage, reporting that September has been a record month with respect to visits to the PDC site and that September 8th had the highest number of hits.

Assistant Attorney General

Nancy Krier summarized the status of pending litigation. She also noted that the agency had received a letter from the State Conservation Commission regarding whether Conservation District supervisors are required to file financial disclosure forms F-1 and C-1, noting that further discussion will follow at the October meeting.

Executive Session

The Commission went into executive session at 1:30 p.m. to discuss possible litigation with legal counsel.

Public Session/Adjournment

The Commission returned to public session and adjourned the meeting at 1:45 p.m. The next meeting is scheduled for Tuesday, October 24, 2000.

Approved by the Commission 10/24/00